

RESOLUTION NO. 2096

A RESOLUTION EXEMPTING WATER SYSTEM SCADA RADIOS FROM THE REQUIREMENTS OF TMC 2.24.210(A)

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City is preparing to advertise for bids for the Water System SCADA (Supervisory Control and Data Acquisition) Radio Conversion Project
2. During the design, City staff concluded that it is beneficial to the project to have the SCADA radios limited to one specific brand.
3. Section 2.24.210(B) of the Troutdale Municipal Code (TMC) allows the City Council to grant exemptions from the prohibition on specifying a product by brand name in procurement processes, based on particular findings.
4. An exemption allowing specification of Trio E-Series and M-Series Licensed Digital Data Radios is warranted because it is unlikely to encourage favoritism or substantially diminish competition in the awarding of public improvement contracts, this is the only brand known to be of the quality desired, and it would result in efficient utilization of existing equipment due to compatibility with same (as defined in Section 2.24.250 of the TMC).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, ACTING AS THE LOCAL CONTRACT REVIEW BOARD FOR THE CITY OF TROUTDALE

Section 1. In accordance with Section 2.24.210(B) of the TMC, the following are exempt from prohibition on specifying a product by brand name in procurement processes contained in TMC 2.24.210(A) during the construction of the Water System SCADA Radio Conversion project and any contemplated future purchases for the Troutdale Water SCADA system:

- a. Trio E-Series and M-Series Licensed Digital Data Radios

Section 2. This exemption is supported by findings which are hereby adopted and incorporated as Attachment A.

Section 3. This resolution is effective immediately upon its adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0

Mayor Jim Kight
Mayor Jim Kight
March 9, 2011
Date

Sarah Skroch
Sarah Skroch, Deputy City Recorder

Adopted: March 8, 2011

**FINDINGS
AND
BACKGROUND SUPPORTING
A PROPOSED EXEMPTION FROM
TMC 2.24.210(A) FOR Water System SCADA radios**

A. Introduction

Under Section 2.24.210B of the Troutdale Municipal Code (TMC), the City Council (acting as the local contract review board) has the authority to exempt certain classes of products from TMC 2.24.210(A), which implements ORS 279C.345(1) by prohibiting the specification of a product by brand name or mark. Such an exemption must be based on one or more of the following findings:

1. It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.
2. The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the contracting agency.
3. There is only one manufacturer or seller of the product of the quality required.
4. Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

The term “compatible” is not defined in the ORS, but Section 2.24.250(B) of the TMC states:

“Compatible” means a product capable of being used efficiently and effectively with existing equipment, supplies, tools, parts, and/or employee training.

Under the terms of ORS 279C.330, the term “Findings” as used in ORS 279C.345 is defined as the justification for an agency’s conclusion that a brand name product otherwise covered by the competitive bidding requirement should be exempt from that requirement. “Findings” include information (to the extent the information may be relevant) to eight topic areas or issues:

1. Operational, budget and financial data;
2. Public benefits;
3. Value engineering;
4. Specialized expertise required;
5. Public safety;
6. Market conditions;
7. Technical complexity; and
8. Funding sources.

These eight topic areas may not all be relevant or pertinent to the ability of a city to make any of the four findings noted above as to a particular exemption but it seems

clear that state law, administrative rule and case law make it obligatory that the local contract review board at least look at and determine whether the eight topics are supportive of the findings or are irrelevant. Thus, the City looked to the topic areas, determined which were relevant and then made other observations based on its assumptions and experience to support making the findings.

B. Background.

Specifications for public works contracts do not typically specify products by brand name. If brand names are necessary for clarity, the wording "or approved equal" is added in order to comply with the requirements of ORS 279C.345(2). However, in select cases a specific brand may be desired due to factors such as compatibility with existing equipment or past positive experience with the desired product and/or past negative experience with competing products. The City believes that the Water System SCADA Radio Conversion Project would benefit from specifying certain brand name components: Trio E-Series and M-Series Licensed Digital Data Radios.

C. Findings.

The City believes that six of the eight factual criteria listed in ORS 279C.330 may be relevant to the Local Contract Review Board's ability to make three of the four findings of which one or more are required by Section 2.24.210B of the TMC. Two criteria - Market Conditions and Funding Sources - were not seen as relevant.

1. Operational, Budget and Financial Data. The City has the potential to save time and/or money by specifying products that are compatible with existing equipment. The desired brands are already in use at the City, and are therefore compatible with existing equipment, supplies, tools, parts, and employee training.
2. Public benefit. The public benefits fiscally by potential savings due to compatibility with existing equipment. There are also potential operational benefits of specifying the Trio products, since that is the only brand known to be of the quality desired. Specifying the two brand name products is unlikely to encourage favoritism or substantially diminish competition in the awarding of public improvement contracts, since the products will be equally available to all potential bidders on the Water System SCADA Radio Conversion Project.
3. Value engineering. By specifying brand name products, the City acknowledges that the opportunity for value engineering may be reduced.
4. Specialized expertise required. Since the desired brand name products are already in use, City staff will be able to apply their existing training and expertise to the products specified in the new SCADA radio system.
5. Public safety. Public safety may be enhanced by specifying the Trio products. Trio is the only brand known to be of the quality desired. Based on the experience of City staff, using other brands may result in operational issues.

Reliability of these digital data radios is critical to public health and safety in remotely operating wells and reservoirs.

6. Market conditions. Irrelevant to the consideration.
7. Technical complexity. By allowing “approved equal” products, City staff may be required to evaluate alternate products and determine equivalency with the desired products. Digital data radios are highly complex programmable solid state electronic products. Evaluating equivalency of such products would therefore be highly complex and very technically difficult.
8. Funding sources. Irrelevant to the consideration.

Based on the above criteria, the following findings can be made:

- a) An exemption allowing specification of Trio E-Series and M-Series Licensed Digital Data Radios is warranted because it is unlikely to encourage favoritism or substantially diminish competition in the awarding of public improvement contracts.
- b) An exemption allowing specification of Trio E-Series and M-Series Licensed Digital Data Radios is warranted because this is the only brand known to be of the quality desired.
- c) An exemption allowing specification of Trio E-Series and M-Series Licensed Digital Data Radios is warranted because it would result in efficient utilization of existing equipment due to compatibility with same (as defined in Section 2.24.250 of the TMC).